

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

11 **THOMAS ROSENBURG *et al.*, on behalf of**
12 **themselves and classes of those similarly**
13 **situated,**

14 **Plaintiffs,**

15 **v.**

16 **INTERNATIONAL BUSINESS**
17 **MACHINES CORPORATION,**

18 **Defendant.**

19
20 **Case No. CV 06-00430 PJH**
21 **MODIFIED**
22 **STIPULATION AND [PROPOSED]**
23 **ORDER EXTENDING TOLLING OF**
24 **FLSA STATUTE OF LIMITATIONS,**
25 **TOLLING STATUTES OF**
26 **LIMITATIONS FOR CERTAIN STATE**
27 **LAW CLAIMS, AND EXTENDING**
28 **SCHEDULE FOR FILING CERTAIN**
29 **MOTIONS**

30 This Stipulation is entered into by and between Thomas Roseburg, James Baxter, Sherry
31 Mattson, Steve Park, Fnu Kennedy, and Exaldo Topacio ("Plaintiffs"), by and through their
32 undersigned counsel, and International Business Machines Corporation ("IBM" or the
33 "Company"), by and through its undersigned counsel. Plaintiffs and the Company are
34 collectively referred to herein as the "Parties."

35 **RECITALS**

36 WHEREAS, the Parties met with a mediator on Wednesday, September 13, 2006, in an
37 attempt to resolve this litigation;

38 WHEREAS, the September 13, 2006 mediation session was constructive but did not

1 resolve the case;

2 WHEREAS, the Parties are in the process of exchanging additional information;

3 WHEREAS, the Parties have scheduled a second mediation session for October 19, 2006;

4 WHEREAS, the Parties would like to continue to attempt to resolve the case;

5 WHEREAS, for the reasons set forth above, good cause exists to postpone the filing of
6 Plaintiffs' motion for Hoffman notice and IBM's motion(s) for summary judgment until
7 November 21, 2006;

8 WHEREAS, the only other modifications of time that the Parties have sought in this case
9 were a thirty-day stipulated extension of the deadline for IBM to respond to the Complaint and
10 two stipulated continuances of the Case Management Conference;

11 WHEREAS, no other dates are affected by these changes;

12 WHEREAS, only to the extent specified below, this Stipulation and Order modifies (1)
13 the Stipulation and Order Regarding Case Schedule, Tolling of FLSA Statute of Limitations, and
14 Potential Collective Action Member Contact Information entered on June 7, 2006 and (2) the
15 Civil Minutes order entered on August 17, 2006, both of which shall otherwise continue in full
16 force and effect;

17 THEREFORE, the Parties stipulate and agree as follows:

18 **STIPULATION AND AGREEMENT**

19 1. Plaintiffs will not move for conditional certification of the prospective
20 FLSA collective action for purpose of issuance of Court-facilitated notice or move to amend the
21 Complaint to add additional state law claims before October 30, 2006, but shall file both motions
22 by November 21, 2006, absent further order of the Court. Plaintiffs will not move for class
23 certification under F.R.C.P. 23 before October 30, 2006, but shall file such motion by ~~the time to~~
24 ~~be specified by the Court~~. NOVEMBER 22, 2006. Same briefing /hrg schedule as par. 2.

25 2. Defendant will not move for summary judgment as to any plaintiff before
26 October 30, 2006, but shall file any early motion for summary judgment (as specified in the Civil
27 Minutes Order of August 17, 2006) by November ~~21~~²², 2006, absent further order of the Court.
Opposition due 12/6/06; Reply 12/13/06. Hearing date will be 1/10/07 at 9:00 a.m.

1 3. The statute of limitations under the FLSA applicable to (a) the Plaintiffs;
2 (b) employees in bands 6-8 of the 499A Position; (c) employees in bands 6-8 of the 498Q, 498R,
3 498S, 498T, and 498U Positions; (d) employees in the 5343 and 5338 Positions; and
4 (e) employees in bands 6-8 of the 594J Position shall be tolled from April 19, 2006 through
5 October 30, 2006.

6 4. The statute of limitations under the wage and hour laws of the states of
7 Connecticut, Kentucky, Maryland, Massachusetts, North Carolina, Ohio, Pennsylvania,
8 Washington, and Wisconsin applicable to the individuals set forth in paragraph 3 shall be tolled
9 from the date on which this Stipulation and Order is filed by the Parties through October 30,
10 2006.

11 5. This Stipulation and Order is without prejudice to Plaintiffs moving the
12 Court, pursuant to the doctrine of equitable tolling, to toll the FLSA statute of limitations for
13 periods before April 19, 2006 or after October 30, 2006. The Company reserves the right to
14 oppose any such motion. This Stipulation and Order is also without prejudice to the Parties
15 reaching agreement about additional tolling.

16 6. This Stipulation and Order will not have the effect of reviving (1) any
17 FLSA claims that were time-barred as of April 19, 2006 or (2) any claims under the wage and
18 hour laws of the states specified in paragraph 4 that were time-barred as of the date on which this
19 Stipulation and Order is filed by the Parties.

20 7. Except as expressly set forth herein, nothing contained in this Stipulation
21 and Order shall constitute a waiver of Plaintiffs' or the Company's legal positions, rights or
22 remedies, including any defense under any statute of limitations or any other defense relating to
23 the passage of time.

24 8. This Stipulation and Order shall not be admissible for any purpose
25 whatsoever, other than for the purpose of enforcing the terms hereof, in any proceeding between
26 the Company and any Plaintiff(s) and/or other individuals for whom a statute of limitations is
27 tolled pursuant to this Stipulation and Order.

28

9. This Stipulation and Order is not intended as, and shall not be construed to be, an admission by any Party that any other Party has or does not have a valid claim or defense.

10. This Stipulation and Order shall not become effective until approved and entered by the Court.

Dated: October 2, 2006

By: _____ /S/ Donna M. Mezias
Donna M. Mezias

Donna M. Mezias (SBN 111902)
JONES DAY
555 California Street, 26th Floor
San Francisco, CA 94104
Telephone: (415) 626-3939
Facsimile: (415) 875-5700

Glen D. Nager, *pro hac vice*
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
Telephone: (202) 879-5464
Facsimile: (202) 626-1700

Matthew W. Lampe, *pro hac vice*
JONES DAY
325 John H. McConnell Boulevard
Suite 600
Columbus, Ohio 43215-2673
Telephone: (614) 469-3939
Facsimile: (614) 461-4198

Attorneys for Defendant IBM

Dated: October 2, 2006

By: /S/ James M. Finberg
James M. Finberg

James M. Finberg (SBN 114850)
Eve H. Cervantez (SBN 164709)
Jahan C. Sagafi (SBN 224887)
LIEFF, CABRASER, HEIMANN &
BERNSTEIN, LLP
275 Battery Street, 30th Floor
San Francisco, CA 94111-3339
Telephone: (415) 956-1000
Facsimile: (415) 956-1008
Email: jfinberg@lchb.com
Email: ecervantez@lchb.com
Email: jsagafi@lchb.com

1 Rachel Geman (RG 0998 [NY])
2 LIEFF, CABRASER, HEIMANN &
3 BERNSTEIN, LLP
4 780 Third Avenue, 48th Floor
5 New York, NY 10017-2024
6 Telephone: (212) 355-9500
7 Facsimile: (212) 355-9592
8 Email: rgeman@lchb.com

9
10 Steven G. Zieff (SBN 084222)
11 David A. Lowe (SBN 178811)
12 Kenneth J. Sugarman (SBN 195059)
13 RUDY, EXELROD & ZIEFF, LLP
14 351 California Street, Suite 700
15 San Francisco, CA 94104
16 Telephone: (415) 434-9800
17 Facsimile: (415) 434-0513
18 Email: szieff@reztlaw.com
19 Email: dal@reztlaw.com
20 Email: kjs@reztlaw.com

21 Todd F. Jackson (SBN 202598)
22 Claire Kennedy-Wilkins (SBN 231897)
23 Lindsay E. Nako (SBN 239090)
24 LEWIS FEINBERG RENAKER &
25 JACKSON, P.C.
26 1330 Broadway, Suite 1800
27 Oakland, CA 94612
28 Telephone: (510) 839-6824
29 Facsimile: (510) 839-7839
30 Email: tjackson@lewisfeinberg.com
31 Email: ckwilkins@lewisfeinberg.com
32 Email: lnako@lewisfeinberg.com

33
34 Adam T. Klein (AK 3293 [NY])
35 Justin M. Swartz (JS 7989 [NY])
36 Piper Hoffman (PH 4990 [NY])
37 OUTTEN & GOLDEN LLP
38 3 Park Ave., 29th Floor
39 New York, NY 10016
40 Telephone: (212) 245-1000
41 Facsimile: (212) 977-4005
42 Email: atk@outtengolden.com
43 Email: jms@outtengolden.com
44 Email: ph@outtengolden.com

45
46 Ira Spiro (SBN 67641)
47 SPIRO MOSS BARNESS HARRISON &
48 BARGE, LLP
49 11377 W. Olympic Blvd., Fl. 5
50 Los Angeles, CA 90064-1625
51 Telephone: (310) 235-2468
52 Facsimile: (310) 235-2456
53 Email: ispiro@smbhblaw.com

1 J. Derek Braziel (00793380 [TX])
2 LEE & BRAZIEL, LLP
3 208 N. Market Street
4 Dallas, TX 75202
5 Telephone: (214) 749-1400
6 Facsimile: (214) 749-1010
7 Email: jdbraziel@l-b-law.com

8 Richard Burch (24001807 [TX])
9 BRUCKNER BURCH, PLLC
10 5847 San Felipe, Suite 3900
11 Houston, TX 77057
12 Telephone: (713) 877-8788
13 Facsimile: (713) 877-8065
14 Email: rburch@brucknerburch.com

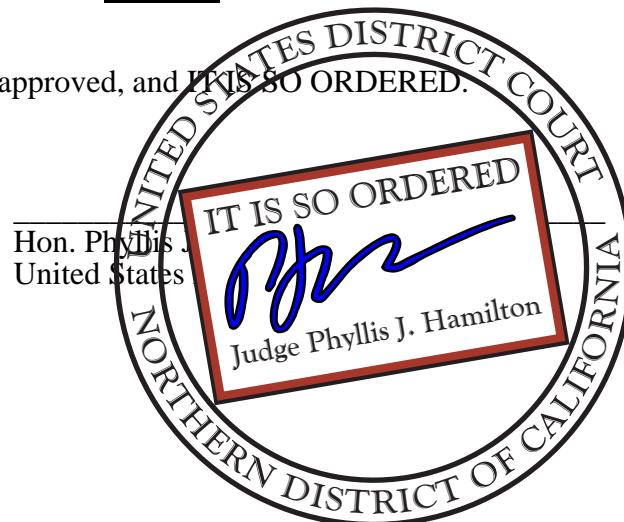
15 David Borgen (SBN 99354)
16 GOLDSTEIN, DEMCHAK, BALLER,
17 BORGEN & DARDARIAN
18 300 Lakeside Drive, Suite 1000
19 Oakland, CA 94612
20 Telephone: (510) 763-9800
21 Facsimile: (510) 835-1417
22 Email: borgen@gdblegal.com

23 *Attorneys for Plaintiffs and the proposed
24 Plaintiff Classes*

25 **ORDER**

26 The foregoing Stipulation is approved, and IT IS SO ORDERED.

27 DATED: 10/5/06



28 *SEE DATE CHANGES.

1 I hereby attest that I have on file all holograph signatures for any signatures indicated by a
2 "conformed" signature (/s/) within this e-filed document.

3 Dated: October 2, 2006

4 /S/ Donna M. Mezias

5 Donna M. Mezias

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